



Virginia Department of Corrections

Operating Procedure

Effective Date February 15, 2010	Number 038.3
Amended	Operating Level Division
Supersedes First Issue	
Authority COV §18.2-64.2, §18.2-61 Prison Rape Elimination Act (Public Law No. 108-79)	
ACA Standards ACA 4-4281-1, 4-4281-2, 4-4281-3, 4-4281-4, 4-4281-5, 4-4281-6, 4-4281-7, 4-4281-8, 4-4406	
Office of Primary Responsibility Deputy Director of Operations Deputy Director of Community Corrections	

Subject

SEXUALLY ABUSIVE BEHAVIOR PREVENTION AND INTERVENTION

Incarcerated Offender Access Yes ☒ No ☐FOIA Exempt Yes ☐ No ☒Attachments Yes ☒ # 3 No ☐**I. PURPOSE**

The Prison Rape Elimination Act of 2003 (Public Law No. 108-79) (PREA) was signed into law in 2003 to "provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape." Meeting the objectives of PREA is a priority of the Virginia Department of Corrections (DOC). DOC has zero tolerance for offender-on-offender sexual assault or abuse, or sexual misconduct or harassment towards offenders. This agency strives to provide a safe environment where offenders are free from such assault and sexual misconduct, and makes every effort to detect, prevent, reduce, and punish sexual abuse, assault, harassment, and misconduct.

This operating procedure provides PREA related information for the DOC, and will serve to direct staff to specific PREA related content in other DOC operating procedures.

II. COMPLIANCE

This operating procedure applies to all offenders, DOC employees, contractors, volunteers and all persons who conduct business with the Virginia Department of Corrections. Sexual conduct between offenders; or employees, volunteers, contract personnel, or visitors and offenders, regardless of consensual status, is prohibited by Code of Virginia §18.2-64.2, §18.2-67.4. ACA Standard 4-4281-6 and Operating Procedures 130.1 *Rules of Conduct Governing Employees Relationships With Offenders*, 135.1 *Standards of Conduct*, 861.1 *Offender Discipline, Division of Operations* and 861.2 *Offender Discipline, Community Corrections Facilities* shall also apply.

III. DEFINITIONS

Abuse - The improper use or treatment of an individual that directly or indirectly affects an individual negatively. Any intentional act that causes physical, mental, or emotional injury to an individual.

Carnal Knowledge - The acts of sexual intercourse, cunnilingus, fellatio, anallingus, anal intercourse, and animate and inanimate object sexual penetration. (Code of Virginia §18.2-64.2)

- * **Fraternalization** - The act of, or giving the appearance of, association with offenders, or their family members, that extends to unacceptable, unprofessional and prohibited behavior. Examples include excessive time and attention given to one offender over others, non-work related visits between offenders and employees, non-work related relationships with family members of offenders, spending time discussing employee personal matters (marriage, children, work, etc.) with offenders, and engaging in romantic or sexual relationships with offenders. (see Operating Procedure 130.1 Rules of Conduct Governing Employees Relationships with Offenders)

Exhibit 2

Medical Authority - The facility medical authority is the facility physician. The Chief Physician provides clinical supervision for the facility physician.

Offender - An inmate, probationer, parolee or post release supervisee or other person placed under the supervision or investigation of the Department of Corrections.

Offender-on-Offender Sexual Abuse/Assault - When one or more offenders engage in sexual conduct or contact with another offender against his or her will or by use of threats, intimidation or other coercive actions. Offender-on-offender sexual abuse is a form of "prison rape" under the Prison Rape Elimination Act of 2003, 42 U.S.C. §15609.

Qualified Mental Health Professional (QMHP) - An individual employed in a designated mental health services position as a Psychologist or Psychology Associate, Psychiatrist, Social Worker (masters level) or Registered Nurse or an individual with social work or relevant human services field with knowledge, training, and skills in the diagnosis and treatment of mental disorders.

PERK - *Physical Evidence Recovery Kit* administered by specially trained professional medical practitioners to collect forensic evidence for criminal investigations of sexual assaults and other sexual violations. PERK examinations should be administered within seventy-two (72) hours of an alleged incident of sexual intercourse.

Rape - Prison Rape Elimination Act of 2003, 42 U.S.C. §15609 defines rape as "the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person's will; or not forcibly or against the person's will, where the victim is incapable of giving consent because of his or her youth, or his or her temporary or permanent mental or physical incapacity; or ...the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury."

Code of Virginia §18.2-61 defines rape as any person who has "sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape."

Sexual Abuse - Subjecting another person to any sexual act or contact between an employee, volunteer or agency representative and an offender by force, persuasion, inducement, or enticement; any sexual act or contact in which an employee, volunteer or agency representative participates or forces any offender to engage; subjecting another person who is incapable of giving consent by reason of their custodial status, physical state or mental state; or rape, sexual molestation, prostitution or other form of sexual exploitation.

Sexual Assault - Any sexual touching or contact that is non-consensual forced or coerced in any manner, including but not limited to rape, sodomy, or unlawful touching. (see Code of Virginia §18.2-67.10)

Sexual Assault Hotline - A toll free telephone number maintained by the Office of the Inspector General to allow offenders to report sexual abuse or misconduct by dialing #55 from any offender telephone system phone.

Sexual Assault/Abuse, employee-on-offender - When an employee, volunteer, intern or contractor engages in sexual conduct, including sexual contact, with an offender. Employee-on-offender sexual abuse is a form of "prison rape" under the Prison Rape Elimination Act of 2003, 42 U.S.C. §15609. Code of Virginia §18.2-64.2, 18.2-67.4. Intentional physical contact or touching by an employee, volunteer, intern or contractor, of intimate parts of an offender in a sexual manner, consensually or non-consensually, shall be deemed Sexual Battery (see Code of Virginia §18.2-67.4). This definition does not include incidental touching during security searches.

Sexual Assault with an Object - The use of any hand, finger, or other instrument or object to penetrate, however slightly, the genital or anal opening of the body of another person. This does not apply to medical personnel engaged in evidence gathering or legitimate medical treatment, or to health care personnel performing body cavity searches in order to maintain security and safety within a facility.

Sexual Harassment - Unwelcome sexual advances; sexually offensive language, comments or gestures; influencing, promising or threatening an offender's safety, custody, privacy, housing, privileges, work or program status, in exchange for personal gain or favor of a sexual nature; creating or encouraging an atmosphere of intimidation, hostility or offensiveness as perceived by any individual who observes the sexually offensive behavior or language.

Sexual Misconduct - Any behavior or act of a sexual nature directed toward an offender by an employee, volunteer, visitor or agency representative. This includes but is not limited to acts or attempts to commit such acts of sexual assault, sexual abuse, sexual harassment, sexual contact, conduct of a sexual nature or implication, obscenity, and unreasonable invasion of privacy. Sexual misconduct also includes but is not limited to conversations or correspondence that suggests a sexual relationship between an offender and any party mentioned above.

Special Agent - Office of Inspector General criminal investigator assigned to the Special Investigations Unit (SIU)

IV. PROCEDURES

A. Zero Tolerance Policy

1. DOC prohibits and will not tolerate any fraternization or sexual misconduct between staff, contractors, volunteers and offenders, or between offenders as defined in Section III of this operating procedure. The Department actively works to prevent, detect, report and respond to any violation.
2. Any behavior of a sexual nature between employees and offenders is prohibited. Employees are subject to a Group III offense under Operating Procedure 135.1 Standards of Conduct, and may be prosecuted under the Code of Virginia. All staff, contractors and volunteers are required to report any suspicion of fraternization or sexual behavior between staff, contractors, volunteers and offenders. Staff are not only required to report, but also may be subjected to a Group action if they do not.
3. Any behavior of a sexual nature by incarcerated offenders is prohibited and subject to disciplinary action per Operating Procedure 861.1 Offender Discipline, Division of Operations and 861.2 Offender Discipline, Community Corrections Facilities, and may result in other criminal charges.
4. Consensual sexual activity among offenders will not be permitted. If offenders engage in this type of activity one or both offenders will be dealt with in accordance with Operating Procedure 861.1 Offender Discipline, Division of Operations and Operating Procedure 861.2 Offender Discipline, Community Corrections Facilities.

B. Prevention

1. Offender Training

- a. When an offender enters a DOC facility from a jail, primarily at Reception Centers or Jail Intake sites, the offender shall receive instruction on how to prevent and report sexual assaults and prison rape. This information shall be communicated verbally and in writing, in language clearly understood by the offender (4-4281-1). At a minimum the offender shall receive the pamphlet immediately upon intake and the training within 10 days of arrival.

VIRGINIA:

AFFIDAVIT

I, C. Mann #1084902, hereby submit this as my own affidavit, of which is based on my personal knowledge as to the matter or matters at issue. In furtherance hereof, your Affiant more specifically states, to wit:

I did not talk to Special Agent Todd Watson on June 2nd
2011; I have never made a statement that De'lonta asked
me to give false information against officer Sarah Pruitt.

I have not talked to any official concerning De'lonta sexual
assault.

I hereby declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully submitted,

Dated: March 27th, 2012

Cy Mann 1084902

Exhibit C